programs available to low-income households in States electing not to participate in the federal Lifeline program, the introduction of toll-blocked or toll-limited basic service,[51] the role of alternatives like prepaid phone cards or wireless service used by some consumers because of temporary living quarters or other reasons; and the entry of new carriers establishing market niches such as limited local service for customers ineligible for service from the incumbent local exchange carrier.[52]

Section 254(j) provides that "[n]othing in [section 254] shall affect the collection, distribution, or administration of the Lifeline Assistance Program provided for by the Commission." While the Commission may have authority, separate from Section 254, to modify the Lifeline program, the Commission should heed the clear statement from Congress that no change was intended. Caution is especially warranted when the change would substantially increase the subsidy amounts, without any analysis demonstrating any significant impact on subscription levels.

The Florida Public Service Commission also commented on the Joint Board's suggestion that States should be required to fund their share of the Lifeline amount, rather than allow companies to recover it through the ratemaking process. The FPSC questioned whether that would cause any States to discontinue participation in Lifeline, as a result of the necessity of establishing a funding mechanism for the program. The FPSC believes that, as more States establish universal service funds in response to the new competitive paradigm, the vehicle for change in the State funding mechanism for Lifeline will be in place. The FPSC also believes that requiring companies to fund the State's portion of Lifeline through their rates will place a burden on those companies that participate, while allowing other companies to avoid contributing their fair share. While the Joint Board proposal to make universal service support contingent upon Lifeline participation would encourage carriers to take part in the program, nevertheless the FPSC commented that if companies are required to absorb

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[51] The Recommended Decision recognized, and the Commission's NPRM itself noted that recent studies suggest disconnection for non-payment of toll charges is a significant barrier to universal service. *See* Recommended Decision, para. 387 & n.1287; NPRM at para. 56 (*citing Subscribership Notice* at 13005-06).

[52] In Georgia -- which does participate in the Lifeline program -- one of the first new entrants which has been in business for almost one year provides toll-blocked service to residential customers who would otherwise be disconnected due to non-payment of their bills. To date, this new local exchange company has signed up 2000 customers in the city of Columbus, Georgia, and has just obtained approval to expand the service to additional exchange areas. Others now have applications to provide similar service. This represents a significant source of increasing the subscription level in a way that is not addressed by the Lifeline program.

the cost of providing Lifeline, it would burden them and their ratepayers in a manner that does not spread the amount evenly across all players.[53]

The GPSC believes that the Commission should not attempt to mandate whether and how the States participate in the Lifeline program. The Kansas Corporation Commission commented that such an FCC-imposed requirement may raise jurisdictional questions and spawn litigation.[54] Further, such a mandate should not be necessary because the FPSC has correctly noted that the States increasingly are establishing their own explicit universal service funding mechanisms, such as Georgia's Universal Access Fund. The FPSC's concern about burdening companies that have historically provided the Lifeline participation can, should be, and is being worked out at the State level. For example, Kansas was listed in the Recommended Decision as one of the States not currently participating in the Lifeline program. However, the Kansas Corporation Commission has just adopted a State universal service fund which would provide for participation in the federal Lifeline program, consistent with recent Kansas legislation requiring implementation of a State universal service support mechanism and initiating a Kansas lifeline service program.[55]

SBC Communications, Inc. submitted an alternative proposal. First, SBC pointed out that the level of the recurring monthly local service charge is not the principal impediment to obtaining service, especially when compared to other factors. More ground will be gained with proposals to waive deposit requirements when Lifeline qualifying customers voluntarily subscribe to toll restriction or management services, or to offer toll management capabilities at no charge to qualifying customers. SBC thus submitted the following alternative proposal: Leave the federal baseline at the current $3.50 level and, to provide incentive for the States to provide Lifeline support, match dollar-for-dollar the full amount of any State contribution over $3.50 for a total federal benefit not to exceed $7.00.[56] The GPSC believes that no change is necessary. However, if the Commission feels compelled to make some change in the Lifeline program, SBC's proposal is worth considering because it would be a more limited expansion with less of a free rider problem in States that already

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[53] FPSC Comments at 6-7.

[54] KCC Comments at 2.

[55] KCC Comments at 1.

[56] SBC Comments at 7-8.

participate, it would maintain the benefit for qualifying lower income households in those relatively few States that do not currently offer a certified Lifeline program, and it would provide a greater incentive for States to supplement the federal benefit.

For all the reasons expressed in these reply comments, the GPSC urges that federal universal service funding in general be very limited, and in particular supports no increase or expansion in the Lifeline program. The GPSC submits that USF support for existing programs, and for any future expansion (which the GPSC generally opposes), should follow the following principles and procedures:

1. The primary objective is to "promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid development of new telecommunications technologies."[57]

2. The second objective is to see that all telecommunications consumers have reasonable, affordable access to the network. This recognizes that we must set priorities, plan, and quantify costs before burdening the competitive market.

3. Subsidies to support reasonable and affordable access to the network must be as cost-effective and efficient as possible. The Commission should avoid simple but costly and ineffective programs. Programs should specifically target those who do not currently have service, identify the reasons why they do not have service, and identify factors to address those reasons in a cost-effective manner. Toll-restricted service is an example of this approach. Once proposed programs are designed in this targeted fashion, they should be prioritized, evaluated, and offered for public scrutiny in the context of a finite, reasonably small fund to avoid unreasonable burdens on the competitive market and upon the customers who inevitably pay for the fund contributions. Programs that do not pass these tests should not be funded.

4. All existing programs should be reevaluated using the above procedure, and all programs should be subject to continuing review using these criteria.

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[57] Preamble, Telecommunications Act of 1996.

VII. SUPPORT FOR SCHOOLS AND LIBRARIES

A. Functionalities/Services Eligible for Discount

The United States Telephone Association ("USTA"), while supporting the Joint Board's recommendation to allow schools and libraries to receive discounts on all commercially available telecommunications services, objected to the recommendation to include internal connections (inside wire) within the scope of "services" eligible for discount. The USTA also disagreed with the apparent blurring of the distinction between the telecommunications services used to access on-line services (*e.g.*, the Internet) and the enhanced services themselves. As the USTA remarked, these are not telecommunications services, and thus are outside the scope of universal service support mechanisms.[58] AT&T Corp. opposed the inclusion of inside wire and enhanced services, querying the statutory basis for doing so. AT&T added that this would also violate the principle of competitive neutrality, and inappropriately enlarge the size of the fund.[59]

SBC Communications, Inc. also opposed these items. SBC argued that allowing universal service funding for Internet access and internal connections would contravene Section 254 and render Section 254(h) unconstitutional.[60]

The GPSC strongly shares these concerns. This enlarging reinterpretation of previously well-understood definitions of "telecommunications services" would expand federal universal service funding by approximately $1.25 *billion per year*. The Joint Board had calculated that its recommendations would result in universal service support for schools and libraries totaling a capped $2.25 billion per year (although unused amounts would be carried forward). (Recommended Decision at paras. 9, 554-556.) AT&T calculated that removing the proposed subsidies for Internet access and inside wiring from the USF, in contrast, would reduce the amount necessary to fund

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[58] USTA Comments at 34.

[59] AT&T Comments at 18-21. AT&T also expressed concern that funding for services other than telecommunications services would greatly add to the cost of the USF, which would threaten public support for universal service. *Id.*

[60] SBC Comments at 43-50.

discounts for schools and libraries to about $1 billion per year.[61] That figure is much more realistic and manageable, especially in light of the need to maintain public support for universal service. The GPSC asks the Commission not to attempt to change and enlarge the definitions of telecommunications "services" in ways that could have other, unintended consequences,[62] and would certainly balloon the size and scope of the federal fund to an extent Congress did not intend.

Besides loading the fund with at least an additional $1 billion annually, the recommendation would also tend to skew the efficient working of the competitive, unregulated markets for inside wire and on-line (Internet) access. Although the Recommended Decision refers to some pre- and post-enactment discussions by some of the legislators about investment in internal connections, the Commission must recognize that the 1996 Act does not support such a breathtaking regulatory expansion. As the Joint Board itself recognized, "The discounts mandated under section 254(h)(1)(B) . . . are limited to the provision of *services* by telecommunications carriers.[63] And as Commissioner Chong stated, "We have to recognize the historical regulatory differences between internal connections and services."[64] The Commission must also recognize the difference between on-line access services such as Internet access, and telecommunications services. Otherwise, just one of the resulting problems will be a violation of the principle of "competitive neutrality," because non-telecommunications carriers would be eligible to receive fund subsidies even though they would not be obliged to participate in contributing to the fund.

The words of Congressman Jack Fields, Chairman of the Subcommittee on Telecommunications of the House of Representatives' Committee on Commerce, help to cut through to the plain meaning of the Act and its relationship to contextual reality:

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[61] AT&T Comments at 21.

[62] If inside wire and Internet access are to become "telecommunications services" under the 1996 Act, questions will follow regarding the application of other statutory provisions including the pricing, access, and regulatory obligations and requirements under Sections 251 and 252.

[63] Recommended Decision, para. 460 (emphasis added).

[64] As she went on to note: "The provision of deep discounts for these unregulated facilities may unintentionally skew the efficient working of the market by inducing a library or school of choose a less efficient internal connection alternative. I am also concerned that inclusion of internal connections will cause the fund to balloon to a level much higher than may be fiscally prudent, at the expense of all consumers of telecommunications services." Separate Statement of FCC Commissioner Rachelle B. Chong, at 5-10.

> The letter of the law is clear that the federal universal service fund can only support subsidies for *services*, not plant and equipment. . . . More importantly, schools, hospitals, and libraries across America are today being wired for advanced telecommunications services. This wiring is occurring not because of a federal universal service fund but as the result of private sector initiatives and programs sponsored by state and local government.[65]

Just a few examples of the trend Representative Fields noted can be seen in certificate applications presented to the Georgia Public Service Commission during the past year. One certificate already has been issued to Marietta FiberNet, a fiber-based network that will provide high-speed data transmission (as well as Internet access) to schools, libraries, hospitals, city and county offices, and other users in the area of Marietta, Georgia. Similar applications have been filed for other, smaller towns in Georgia. In addition, existing and new telecommunications service providers compete to provide such telecommunications services; many companies compete to provide on-line and Internet access; and many nonregulated companies compete to provide inside connections (inside wire).

Section 254 only allows support for "telecommunications services," and funding to be received by either eligible carriers (under Section 254(e)) or carriers (under Section 254(h)). Inasmuch as Internet access and internal connections are not telecommunications services, and the Recommended Decision would permit non-carriers to receive funding (para. 484), the Commission should not accept these recommendations. Section 254(c)(3) which gives the Commission authority to supplement the Section 254(c)(1) definition of universal service speaks only in terms of "services," and is clearly meant to refer to "telecommunications services" because it relates to Section 254(c)(1) which defines "universal service" and expressly limits it to telecommunications services. Section 254(h)(1)(B) discusses reimbursement for telecommunications carriers providing "any of its services which are within the definition of universal service under [Section 254(c)(3)]." These operative sections of the Act do not address information services such as Internet access, or the services, hardware, or software associated with installing internal connections, or funding non-carriers.

Section 254(h)(2)(A), which the Joint Board relied upon for its expansive re-definition, speaks to competitively neutral rules to enhance "access" to advanced telecommunications and information

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[65] Representative Jack Fields, Letter to Chairman Hundt, October 17, 1996.

services. This subsection speaks only of "competitively neutral rules," not of discounts, funds for discount reimbursement or carrier contributions.[66] The Recommended Decision on this point would merge the discount and funding concept of Section 254(h)(1)(B) with the enhancing "access" language of Section 254(h)(2)(A). The Commission should not adopt this because these two provisions are distinct subsections pertaining to different aspects. Merging them would also have the anomalous effect of redefining -- and funding -- telecommunications "services" and "carriers" in a new fashion just for schools and libraries.

Moreover, as SBC Communications, Inc. explained, interpreting Section 254 to permit such funding could render Section 254(h) unconstitutional. SBC commented that if Sections 254(c)(3) and 254(h) are interpreted to support funding for non-carriers and telecommunications services, contributions made to fund discounts for schools and libraries will constitute taxes, the imposition of which would be unconstitutional. The contributions by carriers would no longer be seen as "assessments" or "fees" to ensure the availability of just, reasonable, and affordable telecommunications services.[67] Instead, telecommunications carriers would be required to contribute to a fund that would be used to pay non-carriers (such as information service providers and wiring contractors) to achieve educational goals unrelated to the regulation of telecommunications.[68] If this were construed as a tax, it would not meet the requirement of Article I, Section 7 of the U.S. Constitution that all bills for raising revenues must originate in the House of Representatives, because Section 254 originated in the Senate. Accordingly, SBC concluded, funding any non-telecommunications service or non-carrier would make the contributions an unconstitutional tax.

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[66] Earlier in the Recommended Decision, the Joint Board had recognized the distinction between supporting a telecommunications service, and supporting "access" to a telecommunications service. *See* Recommended Decision, paras. 51, 65, 67. Section 254(h)(2)(A) embodies a similar concept.

[67] *See Rural Telephone Coalition v. Federal Communications Commission*, 838 F.2d 1307 (D.C. Cir. 1988).

[68] *See South Carolina v. Block*, 717 F.2d 874, 887 (4th Cir. 1983), *cert. denied*, 465 U.S. 1080 (1984) (distinction between a "fee" and a "tax" is whether "regulation is the primary purpose" of the statute; tax involves raising revenue for "general welfare"). SBC added its opinion that under the applicable standards, Section 254(h) itself may be suspect as an unconstitutional tax even if limited to carriers in that additional funding is required for general welfare goals associated with schools, libraries, and health care providers, even though telecommunications services are available at "just and reasonable" rates. SBC Comments at 47.

The GPSC agrees that the Commission should interpret Sections 254(c)(3) and 254(h) narrowly to remain consistent with its principles, including competitive neutrality, and to avoid problems of statutory authority or constitutional infirmities. Clearly the Joint Board's recommendations were intended to give additional help to schools and libraries to make new investments in technology. Just as clearly, such funding is and can be made available through other, more appropriate methods than redefining telecommunications services and imposing what amounts to an additional tax in the absence of an express Congressional mandate.

B. Discount Methodology

SBC Communications, Inc. commented that the Joint Board overstepped its authority in contravention of Section 254 when it recommended that the Commission require State commissions to use the same discount schedule for schools and libraries for intrastate services as is used for interstate services. (Recommended Decision, para. 573.) Section 254(h)(1)(B) states: "The discount shall be an amount that the Commission, with respect to interstate services, and **the States, with respect to intrastate services**, determine is appropriate and necessary to ensure affordable access to and use of such services by such entities." (Emphasis added.) As SBC noted, a clearer delineation of authority is hard to imagine.[69]

The GPSC agrees with SBC's comment regarding the scope of authority over intrastate discounts. Under Section 254(h)(1)(B), a State is free to set discounts for intrastate services based upon its own determination of what is "appropriate and necessary." Each State is closer to the voices of affected parties, and can make a better determination of the appropriate and necessary intrastate discounts than can the Commission. This is simply a matter of the States having sole authority in their purview over intrastate matters. Section 254(h)(1)(B) does not authorize the Joint Board or the Commission to condition support for discounted intrastate services upon adoption of the interstate

[69] SBC Comments at 42-43.

discount schedule.[70] This is among the prerogatives specifically and expressly reserved to the States. The Commission should not attempt to dictate the discounts for intrastate services.

C. Restrictions Imposed on Schools and Libraries

AT&T commented that a per-institution cap will be equally important with an overall cap on annual support for schools and libraries. AT&T stated that a per-institution cap is necessary to ensure the equitable distribution of subsidies. Without such a cap, a subset of eligible institutions could exhaust the fund and leave the remaining institutions without any support. Indeed, without a per-institution cap, the system would confer an arbitrary advantage on institutions that were better organized or those that simply acted earlier in the funding year. AT&T added that the Commission should consider allowing the specific per-institution cap to vary as a function of various factors. For example, the cap for schools might vary with the number of students, or as a function of the size of the discount to which it is entitled.[71] The GPSC agrees with this suggestion. The GPSC similarly believes that any USF should not be tied to specific technological specifications, as the Joint Board suggested with respect to services to health care providers, because technological innovations are occurring rapidly and will render such specifications obsolete and, worse, cost-ineffective.

The Information Technology Division of Georgia's Department of Administrative Services ("DOAS-IT") concurred with the National Association of State Telecommunications Directors ("NASTD"), and submitted additional specific comments with respect to Georgia-specific matters concerning requirements that would be imposed on schools and libraries. The DOAS-IT expressed concern that the concept of providing universal service support to eligible schools, libraries, and rural health care providers who are members of purchasing consortia was not adequately explored, and did not recognize the role that state telecommunications agencies such as DOAS-IT play in the process. Specifically, it appears that the Recommended Decision would not allow these entities in Georgia to continue to use services currently provided at volume discounted rates by DOAS-IT. Such an

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[70] The Joint Board's recommendation that the Commission grant "waivers" of this "requirement" does not cure the jurisdictional intrusion upon a State's discretion to make these determinations on its own. A State need not attempt to satisfy the Commission's waiver standard (*see* FCC Rule 1.3) in order to exercise authority already solely and exclusively vested with that State by Congress. *See* 47 U.S.C. § 152(b); *Louisiana Public Service Commission v. Federal Communications Commission*, 476 U.S. 355 (1986).

[71] AT&T Comments at 22.

inadvertent outcome could cause the cost of service to these entities, and to all other users, to increase.[72] The GPSC agrees that such a result should be prevented.

In carrying out its statutory role, DOAS-IT functions as an aggregator of service volumes for all users of its services, obtaining term and volume discounts based on the total requirements. These volume-discounted services are then repackaged and provided to DOAS-IT's customers as a complete service, ensuring the best possible price performance and eliminating extra costs associated with their obtaining and administering services individually. Many local governments or their individual departments, such as school districts, take advantage of this opportunity and enjoy reduced costs as a result. Taxpayers also benefit from these cost reductions.

One example of the aggregation process is the Georgia Statewide Academic and Medical System ("GSAMS") network. GSAMS connects approximately 377 distance learning sites (with projected growth to nearly 400 sites this fiscal year) throughout the State. Of these sites, 169 are installed in K-12 schools, with another 21 scheduled for installation or in the planning stages. The remaining sites are at University System Institutions, Technical and Adult Educational Schools, Correctional Facilities, and some State administrative training sites. If the K-12 school sites were deaggregated and disconnected from this network, costs for all users would rise. It would also significantly impact the delivery of distance education on the network, since much of the programming for K-12 schools originates from the higher education sites.[73]

The DOAS-IT's GSAMS network currently provides ½ -T1 connectivity, switching, and multipoint bridging to all distance learning sites. The telemedicine sites receive full T1 connectivity and similar switching and multipoint bridging. The volumes of both applications are combined for contracting with service providers. DOAS-IT has also begun moving these T1s into a competitively procured DS3 backbone to further reduce the costs to all users. Loss of the volumes from GSAMS would significantly increase the cost of other network services to State government and its taxpayers.[74]

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[72] DOAS-IT Comments at 2.

[73] DOAS-IT Comments at 2.

[74] *Id.*

DOAS-IT first negotiated contracts for the GSAMS intraLATA network services based on 200 sites, but it soon became obvious that the number of sites just for distance learning would likely double that number. Thus DOAS-IT was already able to leverage the increased volumes to reduce network rates by an *additional* 22%. Additional substantial discounts resulted from adding the T1 network backbone requirements to those for the rest of the state's voice and data networking, in fact helping to cost-justify DS3 in the network (thus further reducing costs for all network users).

The DOAS-IT's comments further indicate that these examples are just the beginning of the story. They also suggest certain specific modifications that should be adopted if the Commission chooses to adopt the Joint Board's recommendations generally in this area.[75]

The GPSC submits that these DOAS-IT examples are just some among many that are already growing nationwide, demonstrating that traditional "command-and-control" subsidy programs such as USF are burdensome, slow, costly, and inefficient compared with local initiatives that survive and thrive in the increasingly competitive telecommunications market. The very first inquiry the Commission should undertake is whether such State and local networks can provide lower costs and better deals for all concerned - taking into account aggregated volume discounts, lower administrative costs, simplicity and flexibility, among other factors - than the complex regime envisioned in the Recommended Decision.

VIII. SUPPORT FOR HEALTH CARE PROVIDERS

A. Eligibility / Services Eligible for Support

SBC Communications, Inc. commented that the Joint Board was correct in recommending that non-telecommunications services and products such as Internet access and customer premises equipment ("CPE") are not eligible for the list of additional services. (Recommended Decision, para. 656.) As SBC stated, the Act is clear that only telecommunications services are to be included in the list of additional services, and these items are not telecommunications services.[76] AT&T also echoed

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[75] DOAS-IT Comments at 2-4.

[76] SBC Comments at 10.

its comments, citing Section 254(h)(1)(A), that the Act permits subsidies from the USF only for "telecommunications services," not enhanced services.[77] The GPSC agrees with these comments. These items should not be defined as eligible telecommunications services here, just as they should not be so defined for schools and libraries.

AT&T also suggested that the Commission adopt a total cap and per-institution cap for these subsidies, in addition to those to be provided for schools and libraries. AT&T stated that such caps are necessary to control the size of the overall subsidy, and to ensure that the amounts available for subsides are distributed equitably.[78] The GPSC supports this suggestion.

The Commission also sought comment on the costs of providing toll-free access to Internet service providers ("ISPs") to rural health care providers, and the costs of eliminating distance-sensitive charges. SBC commented that no support is necessary. ISPs are expanding rapidly and, like the Joint Board (Recommended Decision, para. 69), SBC commented that the competitive marketplace can and should be relied upon to continue to eliminate this perceived need. Moreover, taking such action may distort ISPs' incentives to build-out in rural markets.[79] The GPSC agrees with SBC's concerns in this area.

The Commission also sought comments on making network modernization part of the rural health care provision. SBC argued that such action is beyond the scope of authority under the Act, which contains no provision for funding network upgrades. SBC stated that such actions would be costly, unmanageable, and unenforceable. Since the Act's stated goal is to promote competition, the Commission should let the competitive marketplace determine the pace of network modernization.[80] The GPSC wishes to point out to the Commission that Georgia's Telecommunications and Competition Development Act of 1995 contains a provision whereby incumbent LECs that seek "alternative regulation" must provide information on such network modernization plans and

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[77] AT&T Comments at 24.

[78] AT&T Comments at 25.

[79] SBC Comments at 10-11.

[80] SBC Comments at 11.

investments. Furthermore, the State commissions are much more familiar with the unique needs that exist in their rural areas.

B. Restrictions

The Information Technology Division of Georgia's Department of Administrative Services, as mentioned previously (with respect to restrictions on schools and libraries), concurred with the National Association of State Telecommunications Directors ("NASTD"), and submitted additional specific comments with respect to Georgia-specific matters concerning requirements that would be imposed on health care providers. The DOAS-IT expressed concern that the concept of providing universal service support to eligible schools, libraries, and rural health care providers who are members of purchasing consortia was not adequately explored, and did not recognize the role that state telecommunications agencies such as DOAS-IT play in the process. Specifically, it appears that the Recommended Decision would not allow these entities in Georgia to continue to use services currently provided at volume discounted rates by DOAS-IT. This could cause the cost of service to these entities, and to all other users, to increase.[81] The GPSC agrees that such a result should be prevented.

As described previously, in carrying out its statutory role, DOAS-IT functions as an aggregator of service volumes for all users of its services, obtaining term and volume discounts based on the total requirements. These volume-discounted services are then repackaged and provided to DOAS-IT's customers as a complete service, ensuring the best possible price performance and eliminating extra costs associated with their obtaining and administering services individually.

The telemedicine portion of DOAS-IT's Georgia Statewide Academic and Medical System ("GSAMS") network reflects volume discounting similar to that described previously with respect to schools and libraries, particularly since its network services are provided under the same contracts as the distance learning sites. Of the current 46 telemedicine sites, 39 are in rural Georgia. Most of the 15 additional sites expected to be added this fiscal year are also in rural areas. The Telemedicine Network operates in a hub-and-remote arrangement, with rural hospitals as the remotes and urban hospitals including two teaching hospitals as the hubs. Remotes are assigned to their respective

[81] DOAS-IT Comments at 2.

primary hubs for support, and switched through the GSAM network when they require specialist assistance from another hub or one of the teaching hospital hub sites. Deaggregation would create a situation similar to that which DOAS-IT described for distance learning.[82]

The DOAS-IT's GSAMS network currently provides ½ -T1 connectivity, switching, and multipoint bridging to all distance learning sites. The telemedicine sites receive full T1 connectivity and similar switching and multipoint bridging. The volumes of both applications are combined for contracting with service providers. DOAS-IT has also begun moving these T1s into a competitively procured DS3 backbone to further reduce the costs to all users. Loss of the volumes from GSAMS would significantly increase the cost of other network services to State government and its taxpayers.[83] Substantial discounts have resulted from adding the T1 network backbone requirements to those for the rest of the state's voice and data networking, in fact helping to cost-justify the DS3 backbone (thus further reducing costs for all network users).

As mentioned previously, the DOAS-IT's comments also suggest certain specific modifications that should be adopted if the Commission chooses to adopt the Joint Board's recommendations generally in this area.[84]

The GPSC reiterates that Georgia's DOAS-IT examples are just some among many that are already growing nationwide, demonstrating that traditional "command-and-control" subsidy programs such as USF are burdensome, slow, costly, and inefficient compared with local initiatives that survive and thrive in the increasingly competitive telecommunications market. The Commission should carefully evaluate the benefits of such State and local networks compared with the inefficiencies and costs associated with the complex regime envisioned in the Recommended Decision.

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[82] DOAS-IT Comments at 3.

[83] *Id.*

[84] DOAS-IT Comments at 2-4.

IX. INTERSTATE SUBSCRIBER LINE CHARGES AND CARRIER COMMON LINE CHARGES

Although some commentors recommended deferring the SLC and CCLC issues to the Commission's access reform docket, many discussed the purposes and effects of the SLC cap. For example, the United States Telephone Association stated that no evidence would justify decreasing the subscriber line charge ("SLC"). In fact, the USTA stated that the opposite is true. The USTA indicated that increasing the SLC would make prices more cost-based and lead to further efficiency gains.[85]

AT&T Corp., which also opposed the Joint Board's recommendations concerning the SLC and CCLC, recommended that issues concerning modification of the CCLC and SLC should be deferred to the Commission's upcoming access reform proceeding. AT&T's position is that the CCLC should be eliminated, and that the SLC should be increased or at least not reduced.[86] The Joint Board recommended that the current SLC cap not be increased. Further, if the Commission were to add intrastate revenues to the base for assessing contributions (a proposal with which the GPSC strongly disagrees), then the Joint Board would recommend lowering the SLC cap for primary residential and single-line business lines.[87]

The Texas PUC supported the retention of -- or a decrease in -- the current $3.50 cap on the SLC, pending further review in the FCC's anticipated access charge proceeding.[88] The Office of Advocacy of the U.S. Small Business Administration supported the Joint Board's proposal to reduce the SLC for residences and single-line businesses to reflect half of the reduction in long-term support

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[85] USTA Comments at 20-21, also quoting from Jerry Hausman, Timothy Tardiff & Alexander Belinfante, *The Effects of the Breakup of AT&T on Telephone Penetration in the United States*, AEA Papers and Proceedings, May 1993, at 183-184; and Kenneth Gordon & William E. Taylor, *Comments on Universal Service*, Comments of BellSouth Corporation, CC Docket No. 96-45, April 12, 1996.

[86] AT&T Comments at 10, 11-13.

[87] Recommended Decision, para. 11.

[88] Texas PUC Comments at 11.

(LTS) and pay telephone payments that have resulted from the 1996 Act.[89] The National Association of State Utility Consumer Advocates ("NASUCA") also supported reducing the SLC, believing that such a reduction is necessary under Sections 254(b) and (k) of the 1996 Act. Further, although the Joint Board recommended that the SLC cap be reduced, the Recommended Decision tied reduction of the SLC cap to the adoption of a universal service fund revenue base comprising interstate and intrastate services, and to the recovery of pay telephone costs (para. 754). NASUCA believes that, through the SLC, basic exchange service customers are bearing an unreasonable share of interstate common loop costs, and so the Commission is required by the Act to reduce the SLC cap, regardless of the revenue base that is adopted for the universal service fund or any determination about the recovery of pay telephone costs.[90] Especially because the GPSC supports deferring the issue to the access reform docket, the GPSC does agree with NASUCA's point that the merits of the SLC cap should be considered separately from other issues, including the question of including intrastate revenues in the revenue base (discussed later in these reply comments).

The Commission last addressed the SLC in 1987, accepting the finding of the Joint Board that a "fair share" of revenues to be recovered by IXCs through the CCLC would be approximately 50% of interstate allocated loop costs,[91] with the remaining 50% to be recovered through the SLC. NASUCA submitted that a maximum SLC recovery of 50% of interstate common line costs (compared with the 66% that SLC revenues presently represent) would be a "reasonable share," provided, consistent with the Universal Service Joint Board's recommendation (para. 273) that the

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[89] SBA Comments at 22-23. The SBA also commented, however, that the SLC should also be reduced for a large number of multi-line subscribers who are small businesses. The SBA stated that if the Commission is to distinguish between groups of telephone subscribers for the purposes of SLC reductions, it should distinguish between small and larger businesses. *Id.* at 23.

[90] NASUCA Comments at 2-8. NASUCA added that the Commission is obligated under Section 254(k) to reduce the SLC, and this obligation is not negated or altered in any way by changes to the Lifeline programs. The Joint Board recommended (para. 423) that the SLC be delinked from Lifeline and Link Up. By adopting this recommendation, the Commission would remove any connection between changes to Lifeline programs and reductions to the SLC. NASUCA argued that changes to the low income support programs have no bearing whatsoever on SLC reductions that are required pursuant to the Act. NASUCA Comments at 9.

[91] MTS and WATS Market Structure, Amendment to part 67 of the Commission's Rules and Establishment of a Joint-Board, *Report and Order*, 2 FCC Rcd 2953, 2958 & n.36 (1987).

costs being recovered are the costs of a loop designed for voice grade service and not costs incurred to provide broadband and other enhanced services that are not part of basic telephone service.[92]

The SLC is assessed to local exchange service customers to recover a portion of local exchange carrier interstate local loop costs. (Recommended Decision, para. 188.) The local loop represents the "common line" that is necessary for the provision of virtually any service that relies on the local telephone network to reach subscribers. (*Id.*, para. 273.) Therefore it is not a facility or cost that should be assigned exclusively to any one service. Rather, it is a joint and common or shared cost that should be recovered from many services. The GPSC believes that these factors demonstrate why the SLC should be considered in the access charge proceeding.

Therefore, the GPSC takes no position in this docket on the underlying merits of increasing or decreasing the SLC cap. The Commission already issued its Notice of Proposed Rulemaking (adopted December 23, 1996, released December 24, 1996), which includes (at paras. 59-67) requests for comments due on January 27, 1997 regarding the CCLC and the SLC. The NPRM indicates proposals regarding the SLC and CCLC that differ from those contained in the Recommended Decision.[93] The GPSC does agree that the issues pertaining to the SLC cap should and will be addressed in the access charge proceeding.

X. ADMINISTRATION

A. Mandatory Contributors to Support Mechanisms

The United States Telephone Association acknowledged that the statute specifies that only interstate service providers are required to contribute, but suggested a way to circumvent this by redefining a provider of interstate services to be "any carrier that originates or terminates an interstate call."[94] This apparently is intended to widen the scope, not just of "providers of interstate

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[92] NASUCA Comments at 7, citing Ex parte letter filed by Kathryn Falk, Director of Government Relations, NECA, September 4, 1996.

[93] *In the Matter of Access Charge Reform*, CC Docket No. 96-262.

[94] USTA Comments at 17 & n.24.

telecommunications," but "providers of interstate telecommunications services." The GPSC disagrees with such redefinitions that tend in the direction of increasing, rather than decreasing, regulation of the telecommunications marketplace.

The USTA's suggestion would go well beyond the Joint Board's recommendation, which is that any entity that provides any interstate telecommunications for a fee to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public, to contribute to the fund. (Recommended Decision, para. 784.) The USTA's redefinition would be unconstrained by the test whether the services are provided for a fee to the public. As it is, the Joint Board's recommendation (at para. 785) went too far by subsuming a very broad list of providers, including but not limited to the interstate portion of:

> cellular telephone and paging, mobile radio, operator services, PCS, access (including SLCs), alternative access and special access, packet switched, WATS, toll-free, 900, MTS, private line, telex, telegraph, video, satellite, international/foreign, intraLATA, and resale services.

Under this definition, the Utah PSC and others correctly commented, virtually all telecommunications providers would be interstate carriers. If this broad definition had been Congress' intent, then the term "interstate" in Section 254(d) would be meaningless.[95]

The Joint Board separately refrained from recommending that "other providers of [interstate] telecommunications" be required to contribute to support mechanisms. (Recommended Decision, para. 794.) The phrase "other providers" refers to entities that provide telecommunications that meet the entity's internal needs, are provided free-of-charge, or otherwise are not provided "for a fee directly to the public."[96] However, to the extent that "other providers" such as private network operators offer interstate telecommunications services that do meet the Joint Board's recommended definition, the Joint Board recommended requiring that they contribute to support mechanisms (para. 784). Adopting the USTA's recommended redefinition would lead to overruling the Joint Board's recommendation regarding "other providers," and it should be rejected.

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[95] UPSC Comments at 5.

[96] 47 U.S.C. § 153(46).

B. Revenues Base for Assessing Contributions

The United States Telephone Association and AT&T recommended including intrastate retail revenues in the funding base, in response to the Joint Board's request for further comment on whether both inter- and intrastate revenues should be assessed to fund universal service. While the USTA acknowledged that the statute specifies that only interstate service providers are required to contribute, the USTA would circumvent the Act by redefining a provider of interstate services to be "any carrier that originates or terminates an interstate call."[97] This suggestion could be shrugged off, were its consequences not so sobering. AT&T argued on several bases, including an argument that States may assess on interstate revenues, even though this has not been universally clearly established.[98] The GPSC opposes these recommendations, and strongly urges the Commission not to attempt such a radical, *ultra vires* redesign of the system of parallel jurisdiction.

The GPSC agrees with the comments of the Kansas Corporation Commission, the New York Department of Public Service, the Pennsylvania Public Utilities Commission, the Utah Public Service Commission, and others who urged the Commission not to attempt asserting jurisdiction over revenues from intrastate services. Similarly, SBC Communications, Inc. commented in agreement with Commissioner McClure who observed that using both the interstate and intrastate revenues of interstate carriers would create an inequitable and discriminatory basis for interstate universal service contributions.[99] As Commissioner McClure noted, carriers authorized to provide only intrastate service are not required to make contributions to the federal universal service fund.[100] SBC concluded that assessing contributions on a carrier's intrastate revenues because that carrier also provides interstate service clearly discriminates against the carrier providing interstate service.

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[97] USTA Comments at 17 & n.24.

[98] AT&T Comments at 5-8.

[99] Commissioners Kenneth McClure and Laska Schoenfelder dissented on the issue of including intrastate revenues in the calculation of carrier contributions.

[100] SBC Comments at 18, citing Separate Statement of Commissioner Kenneth McClure, Concurring in Part and Dissenting in Part.

The GPSC supports the comments of the New York State Department of Public Service, the Utah Public Service Commission, and others which urged the Commission to heed the plain language of Section 254 and its legislative history, and not attempt to fund the federal program using intrastate revenues.[101] The Joint Board recommended that federal support for schools, libraries, and rural health care providers be funded by interstate telecommunications carriers based on the revenues derived from both interstate and intrastate services (para. 817). The Joint Board suggested that federal high cost and low-income programs might be funded, in part, by assessing intrastate revenues, but recommended that the Commission seek further comment on this point (para. 822).

The Commission should consider the practical consequences of adopting this recommendation without modification. The implementation of an otherwise laudable program could be jeopardized by appeals and possible stay pending appeals, based upon such an attempt to reach beyond the interstate jurisdiction. This consideration is a realistic one; thus the Commission should at a minimum pause for further reflection on the matter, and allow the federal program to begin with funding from the interstate jurisdiction. Contributions based upon revenues from interstate services may well prove sufficient to fund the appropriate goals of a federal program. It would be premature for the Commission to risk asserting authority to assess contributions from intrastate revenues.

The Utah Public Service Commission noted that the Joint Board's recommendation may be impermissibly discriminatory. As the UPSC pointed out, revenues from intrastate services provided by an interstate carrier would be subject to federal USF charges while revenues from the exact same intrastate services provided by an intrastate carrier would not. The recommendation could also have the undesirable effect of encouraging telecommunications carriers to engage in corporate restructuring just to avoid paying the federal contributions on intrastate services, splitting off interstate services from intrastate services through the creation of new corporate entities.[102]

The GPSC joins the Kansas Corporation Commission, the NYDPS, the UPSC, and others in asking the Commission to reconsider and modify this approach to remove intrastate revenues from

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[101] NYDPS Comments at 1-2; UPSC Comments at 2-5. Other commentors who opposed adding intrastate revenues to the basis for contributions included Bell Atlantic Nynex Mobile (BANM Comments at 10, 12).

[102] UPSC Comments at 4.

the base for assessing contributions.[103] Congress did not intend that the federal program be funded with revenues from intrastate services. This is apparent from reading the 1996 Act, and in its legislative history; and nothing has changed Section 152(b)(1) of the 1934 Act, which prohibits the Commission's authority "for or in connection with intrastate communication service." Moreover, Section 152(b)(2) specifically prohibits the Commission's jurisdiction over the intrastate revenues of carriers that provide interstate access.

Section 254(d) states that "[e]very telecommunications carrier that provides **interstate** telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service" (emphasis added). Thus the Commission has no authority, under Section 254(d), to reach to intrastate services for contributions.

Intrastate services and the revenues therefrom are expressly addressed in a separate subsection, which provides the States rather than the Commission with authority to require "every telecommunications carrier that provides **intrastate** telecommunications services ...[to] contribute ... in a manner determined by the State to the preservation and advancement of universal service in that State." Section 254(f). The Commission must restrict federal universal service program funding to interstate revenues, and permit the States to operate within the intrastate realm as intended by the 1996 Act, the 1934 Act, and by the Constitution itself.

Had Congress intended that the Commission be allowed to use intrastate revenues, there would have been no reason to use the word "interstate" in specifying those services subject to federal fund contributions. The Joint Board's interpretation would render the entire clause ("that provides interstate service") not merely surplusage, but actually nugatory, void. Such an interpretation perforce violates the fundamental rule of statutory construction that legislation must be read in a manner that assigns meaning to each word, and renders no words superfluous.[104]

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[103] KCC Comments at 6-7; NYDPS Comments at 2, 3-8; UPSC Comments at 2-5.

[104] *See, e.g., Fox-Knapp, Inc. v. Employers Mut. Cas. Co.*, 725 F.Supp. 706 (S.D.N.Y. 1989).

The 1996 Act's legislative history supports the plain reading of the statute, showing that Congress never intended federal universal service funding to be subsidized from intrastate services. The Senate intended, in passing S. 652, that "States shall continue to have the primary role in implementing universal service for intrastate services."[105] Congress' intent to preserve parallel authority was further expressed in the Senate Report, stating that: "This new section is intended to make explicit the current implicit authority of the FCC and the States to require common carriers to provide universal service."[106]

The Conference explicitly rejected language in the Senate bill which would have expanded the scope by saying, "every telecommunications carrier engaged in intrastate, interstate, or foreign communication shall contribute." (S. 652, Section 253(c).) Instead, the Act states, "every telecommunications carrier that provides **interstate** telecommunications services shall contribute" (Section 254(d)). Congress clearly intended no change in the fundamental, parallel system whereby the Commission administers federal universal service programs using contributions from interstate service revenues, and the States administer State universal service programs and otherwise further universal service goals on the basis of revenues from intrastate service.

There is no implied preemption in the 1996 Act, which actually contains the provision in Section 601 that the Act and the amendments made by the Act shall not be construed to modify, impair or supersede federal, State, or local law "unless expressly provided"(emphasis added). If the plain language of the Act were not enough, Section 601 precludes any attempt to theorize that the federal funding may be subsidized in any amount from revenues from intrastate services.

Section 152(b) of the 1934 Act not only prohibits the Commission from establishing specific rates for certain intrastate services; it denies the FCC jurisdiction over a broad range of matters associated with intrastate communications and services.[107] Section 152(b)(1) reserves to the States authority over "charges, classifications, practices, services, facilities, or regulations for or in

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[105] Conference Report on S. 652, at 128.

[106] Senate Report on S. 652 (Report No. 104-230), at 25.

[107] *Louisiana v. Federal Communications Commission*, 476 U.S. 355, 373 (1986).

connection with intrastate communication service." Hence the States -- not the FCC -- have authority with respect to using revenues from intrastate services for any universal service mechanisms.

Section 152(b)(2) limits the Commission's jurisdiction over companies that provide only intrastate service and interstate access; such connecting carriers merely facilitate the interstate or foreign communications of other licensed carriers.[108] Contrary to the Joint Board's recommendation that such connecting carriers pay a portion of their intrastate revenues into a federal fund, the Commission's jurisdiction over connecting carriers is strictly limited to the interconnection provisions of Sections 201-205.[109]

The GPSC agrees that the prime responsibility for customer rates and thereby universal service support should rest with the individual States that are closer the needs of their citizens. A large federal USF will place significant financial demands on telecommunications providers and their customers. It would be much more difficult for States to impose additional USF burdens on those same customers and same intrastate services in order to further the worthwhile goals identified by the States. It is therefore desirable from a policy standpoint that the federal fund be relatively smaller and generally play a supporting role for individual State programs.

As the Kansas Corporation Commission aptly noted, the imposition of an FCC assessment which includes intrastate revenues would result in a "double assessment" of intrastate revenues. The KCC believes that the States have no legal authority to impose their own assessments on interstate revenues, so State universal service support can only be based upon intrastate revenues. Case law exists to support Kansas' position.[110] Further, the recommended decision indicates its preference for State participation in low-income assistance support. Contrary to this stated goal, States would lack

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[108] *GTE Services Corp. v. Federal Communications Commission*, 474 F.2d 724, 736 (2d Cir. 1973).

[109] *See, e.g., North Carolina Utilities Commission v. Federal Communications Commission*, 537 F.2d 287 (4th Cir. 1976), *cert. denied*, 429 U.S. 1027 (1976) ("NCUC I"); ("NCUC II"); *Lincoln Telephone and Telegraph Co. v. Federal Communications Commission*, 659 F.2d 1082 (D.C. Cir. 1981).

[110] *AT&T Communications of the Mountain States, Inc. v. Public Service Commission*, 625 F.Supp. 1204 (D. Wyo. 1985)(PSC exceeded its jurisdiction by including interstate calls in the base for calculating contributions for the cost of local disconnect service).

the incentive to participate in low-income support mechanisms if the federal portion of contributions were financed by assessments applied to intrastate revenues.[111]

In conclusion, the Commission would be acting outside the scope of its authority if it were to include revenues from intrastate services in the basis for the federal universal service assessment. For this reasons and for the other public policy reasons expressed above, the GPSC respectfully requests the Commission not to adopt the Recommended Decision on this point, but to limit federal funding to revenue from interstate services, and allow revenue from intrastate services to be used appropriately by the States to further State universal service goals.

XI. CONCLUSION

The GPSC joins many commentors who applauded the Joint Board's substantial efforts. In addition, as detailed above, the GPSC also supports many of the commentors who recommended that the Commission make significant modifications to the Joint Board's recommendations. The GPSC asks that the Commission adopt such modifications to be consistent with sound principles, to target universal service support in the most cost-effect methods possible, and to avoid burdening consumers and the competitive market with costly and complicated subsidy programs.

Respectfully submitted,

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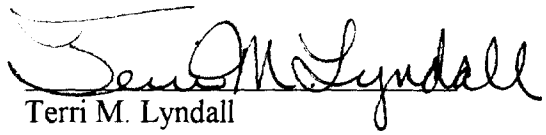
Dated: January 10, 1997

[111] KCC Comments at 6.

CERTIFICATE OF SERVICE

The undersigned Terri M. Lyndall does hereby certify that true and correct copies of the foregoing Reply Comments of the Georgia Public Service Commission to Comments Regarding the Joint Board's Recommended Decision were served on this 9th day of January, 1997 by first-class United States mail, postage prepaid, to the persons shown on the list hereto attached.



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